Guideline

NSW HEALTH

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Salary Sacrifice for Superannuation - NSW Health - Central Office

Document Number	GL2005_021
Publication date	25-Jan-2005
Functional Sub group	Personnel/Workforce - Conditions of employment
Summary	Guideline to employees regarding allowing salary sacrifice superannuation.
Author Branch	Corporate Personnel Services
Branch contact	9391 9133
Applies to	NSW Dept of Health
Distributed to	NSW Department of Health
Review date	25-Jan-2010
File No.	98/6557
Previous reference	99/30
Issue date	13-Apr-1999
Status	Active

Director-General

CIRCULAR

	File No	98/6557
	Circular No	99/30
	Issued	13 April 1999
	Contact	Ms L Edgar (02) 9391 9803 Ms J Sharman (02) 9391 9354 Workforce Relations

SALARY SACRIFICE FOR SUPERANNUATION
NSW HEALTH – CENTRAL OFFICE

Following agreement between the Public Sector Management Office and the Public Service Association the following awards were varied by consent on 25 August 1998 to allow for salary sacrifice for superannuation:

- Crown Employees (Public Sector - Salaries June 1997) Award;
- Crown Employees (Senior Officers) Award; and
- Crown Employees (Wages Staff) Rates of Pay Award.

The Premier's Department issued Circular 98-70 "Salary Sacrifice for Superannuation" which advised that the NSW Government had now approved of optional salary sacrifice for superannuation for all non-SES staff throughout the NSW public sector **subject** to agreement between the employee and the employee's Department or agency.

This Circular outlines the guidelines that will apply regarding the implementation and administration of salary sacrifice for superannuation for Department of Health personnel.

Management must ensure that all employees are informed of the new provisions for salary sacrifice. To assist an Information Sheet has been prepared (Appendix A). **Arrangements will be made for the Information Sheet to be attached to each employee's pay advice as soon as possible.**

Employees are strongly advised to seek independent professional financial advice before entering into salary sacrifice for superannuation arrangements.

Enquiries in regard to this circular should be directed to Lee Edgar, telephone number (02) 9391 9803 or Juliette Sharman, telephone number (02) 9391 9354 .

Michael Reid
Director-General

Distributed in accordance with circular list(s):

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APPENDIX A

Salary Sacrifice for Superannuation – Information for Employees

What is salary sacrifice for superannuation?
It is the option of making additional superannuation contributions in gross or pre-tax dollars to approved complying superannuation funds.

Am I eligible?
Following variation of the relevant award, salary sacrifice arrangements will be available to all non-Senior Executive staff whose employment contract will be for periods in excess of six months. Salary sacrifice is at the election of the employee, but is subject to the agreement of the Department.

Why would anyone choose to salary sacrifice?
Depending upon your personal circumstances, there may be taxation benefits. For example, salary sacrifice reduces PAYE tax and the superannuation contributions are taxed concessionally - that is, the tax on superannuation may be less than your marginal tax rate. This may change over time if the taxation rules change.

It is expected that people who are thinking about retirement, who have entered the workforce later in life, or who have had career breaks or leave without pay will find salary sacrifice for superannuation attractive. ***However, you are strongly advised to seek independent professional financial advice before entering into salary sacrifice arrangements.***

What fund do I choose?
You can have salary sacrifice contributions made to First State Superannuation Scheme (FSSS) or any complying superannuation scheme that the Department **agrees to, excluding State Superannuation Scheme (SSS) or State Authorities Super Scheme (SASS) as these are preserved benefit funds**. Salary Sacrifices for superannuation may only be made to one complying fund. If your superannuation guarantee contribution is currently directed to FSSS you can have salary sacrifice contributions made to either FSSS or any one complying superannuation scheme. However, if you have directed your superannuation guarantee contributions to a non-FSSS fund and you wish to salary sacrifice for superannuation you are obliged to have the salary sacrifice for superannuation contributions paid into the same fund.

Two lists of complying funds have been developed, ie the "A" list which currently comprises FSSS Health Employees Superannuation Trust Australia (HESTA) and Private Healthcare Employee Superannuation Fund (PHESF) and a "B" list which will comprise of all other complying funds to which employees wish to contribute.

But there are costs….
Yes. The superannuation funds charge administration and management fees, independent professional financial advisers may impose a fee and in some circumstances Employers will impose administrative charges (currently $50) for example, where employees wish to make repeated changes to their arrangements or sacrifice to a "B" list fund.

How much of my salary may I sacrifice for superannuation?
Up to 30% of the salary on which your after-tax contributions to SSS or SASS are based ie "superannuable salary", or your current award salary, whichever is the lesser.

Will this affect my SSS or SASS contributions or other entitlements?
No! Salary sacrifice has been deemed an "approved employment benefit" for these superannuation schemes so that your after-tax contributions to SSS or SASS and your benefits are not reduced.

What happens to my other employment benefits?
They are not affected. Overtime, shift penalties or other allowances including annual leave loading, will be paid on the same basis as before you sacrificed salary for superannuation.

Does my employer still need to make superannuation guarantee contributions?
Yes! All employers must comply with the superannuation guarantee requirements, which require employer contributions of 7% of salary as from 1 July 1998. Your salary sacrifice will not reduce those contributions by employers.

Are there any rules or restrictions?
Yes. Any salary sacrifice for superannuation arrangements can only be made with the agreement of the Corporation.

And don't forget that……
Apart from special circumstances as prescribed by your fund (Refer to Clause 7.2 of Circular 99/30, as varied from time to time) additional contributions, once made, will generally be preserved (locked away) until your retirement. Thus salary sacrifice for superannuation is a significant decision. ***You are encouraged to treat it as seriously as other significant financial matters.***

Can I stop my salary sacrifice or transfer it if I move to another agency?
Cancellation is always available following one months notice. Each public sector agency will have local arrangements regarding salary sacrifice for superannuation. If employees are intending to transfer to another agency they should ascertain whether salary sacrifice for superannuation is available at your new agency and what administrative arrangements apply.

Further Information:
For further information/clarification on salary sacrifice for superannuation, refer to Department of Health Circular 99/30 or contact Lee Edgar, telephone number (02) 9391 9803 or Juliette Sharman, telephone number (02) 9391 9354

SALARY SACRIFICE FOR SUPERANNUATION - ISSUES TO CONSIDER

The Department of Health has asked me in my capacity as an independent superannuation consultant and a licensed securities dealer to highlight issues for Health employees to consider in deciding whether to utilise salary sacrifice superannuation.

You can have salary sacrifice contributions made to First State Superannuation Scheme (FSSS) or any complying superannuation scheme that the Corporation **agrees to**, **excluding State Superannuation Scheme (SSS) or State Authorities Super Scheme (SASS) as these are preserved benefit funds. Despite the cost involved, it is desirable always to seek independent financial advice to confirm the wisdom of any action you may take.** The following issues are relevant to making that decision:

1. TAXABLE INCOME
Salary sacrifice for super can be very advantageous for all staff including relatively low income earners wanting to save more money for retirement. Indeed, for all full time wage earners, superannuation tax rates are more advantageous than normal personal PAYE tax rates.

The biggest tax savings emanate from taxable income in excess of $38,000 per year where the PAYE income tax rates of either 44.5 per cent or 48.5 per cent apply. These compare with the superannuation tax rate of 15 per cent (or up to 30 per cent for high income earners where the surcharge applies).

When seeking advice, make sure that any salary sacrifice superannuation proposed offers substantial tax advantages, allowing for any lump sum tax that may be payable on the benefits.

2. EXISTING SUPERANNUATION BENEFITS
Salary sacrifice superannuation is particularly attractive for taxpayers needing to build up their assets for retirement. Any money directed to additional superannuation will be tied up until retirement after the designated preservation ages. The minimum preservation age is 55. For younger employees, this minimum age is now 60.

For those with large superannuation benefits already, it is essential to check that any additional salary sacrifice superannuation will not result in benefits in excess of their Reasonable Benefit Limit (RBL) above which penalty tax rates apply.

3. FIRST STATE SUPER (FSSS) MEMBERS

FSSS does not require members to make any contributions out of post-tax dollars to their fund. Additional salary sacrifice superannuation contributions thus pose no special problems for FSSS members. They are particularly attractive to FSSS members already making voluntary contributions out of after-tax income.

4. STATE AUTHORITIES SUPERANNUATION SCHEME (SASS) MEMBERS

SASS allows members to vary their contribution rate between 1 and 9 per cent of their superannuation salary. However, to gain the maximum employer subsidy from the scheme, SASS requires an average member contribution rate of 6 per cent (6 basic points) per year.

Even though the member contributions must be paid out of after-tax income, SASS members need to ensure that they have gained the maximum employer benefit available to them from SASS before considering salary sacrifice contributions to another fund.

Except for SASS members who have already accumulated benefits equal to or close to the maximum employer benefit of 180 basic points or who have already contributed at a higher average rate than 6 per cent, it will rarely be advantageous to reduce member contribution to SASS in order to fund pre-tax salary sacrifice contributions to another fund.

5. STATE SUPERANNUATION SCHEME (SSS) MEMBERS

Unlike SASS members, SSS members can not vary the level of their post-tax member contributions other than when they have the opportunity to abandon additional units. The important issue for SSS members to consider is whether it may be advantageous to abandon additional units when the opportunity arises in order to fund pre-tax salary sacrifice super contributions to another fund.

This can be an attractive option, especially for employees wanting to work until their normal SSS retirement age (60 except for females who opted for age 55). Any units abandoned can be purchased with a lump sum cash payment at or after these normal retirement ages.

Daryl Dixon
Writer and Consultant
March 1999

Disclaimer: This paper provides a summary of issues only and should not be relied as substitute for professional or other advice.

APPENDIX B

NEW SOUTH WALES

DEPARTMENT OF HEALTH

SALARY PACKAGING OF

SUPERANNUATION

EMPLOYER GUIDELINES

INDEX

SALARY SACRIFICE FOR SUPERANNUATION

1. KEY FEATURES

The key features of the salary sacrifice arrangements can be summarised as follows:

- In the NSW Health System, irrespective of the employee's current superannuation scheme and following variation of the relevant award, salary sacrifice arrangements will be available to all non-SES staff whose employment contract will be in excess of 6 months. Salary sacrifice is at the election of the employee, but subject to the agreement of the Department (the employer).

- Salary sacrifice arrangements must be formalised by an agreement between the employee and the employee's organisation.

- Employees who elect to enter into salary sacrifice arrangements may direct superannuation contributions to be made to either the First State Superannuation Scheme (FSSS), Health Employees Superannuation Trust Australia (HESTA), Private Healthcare Employee Superannuation Fund (PHESF) or a private sector complying superannuation fund, with the agreement of the Department. It should be noted that the aforementioned funds have been agreed between the Department and the relevant union.

- The majority of employers (including the NSW Health) to whom salary sacrifice arrangements may apply will not be subject to federal income tax or a State tax equivalent regime. For such employers, the cost of remunerating an employee by way of salary and by way of superannuation contribution is the same.

- Whilst the amount of salary to be sacrificed for superannuation is at the option of the employee, an employee who does elect to sacrifice will be restricted to sacrificing a maximum of 30% of his or her currently applicable superannuable salary or award salary whichever is the lesser.

- Salary sacrifice for superannuation may give rise to certain immediate taxation benefits for employees. However, superannuation benefits may be subject to tax when paid from the fund, the result of which may be to reduce or eliminate the ultimate taxation benefits to be derived from salary sacrifice. In addition, the superannuation benefits generated through such sacrifice will be subject to "preservation" (refer 7.2). Accordingly, the individual employee concerned can only assess the relative merits of sacrificing current salary for superannuation contributions in light of their own circumstances.

  Employees are strongly encouraged but not compelled to obtain advice from a licensed financial planner prior to making a decision to sacrifice salary for superannuation contributions. (See Employee's Declaration at Appendix C)

- Salary sacrifice for superannuation will not affect the calculation of allowances, penalty rates, overtime, payment for unused leave entitlements or an employee's leave loading. Further, the salary sacrifice arrangements cannot be used to satisfy the requirement for compulsory employer contributions required to the First State Superannuation Fund (or any other scheme if the employee has directed that the Service pay superannuation guarantee contributions to that other scheme) pursuant to the superannuation guarantee legislation requirements.

- Member benefits and contributions in the defined benefit schemes (State Superannuation Scheme, State Authorities Superannuation Scheme and State Authorities Non-contributory Superannuation Scheme) are based on the "salary" of members. Salary sacrificed for superannuation has no effect on benefits or member contributions, because it is designated an "approved employment benefit" and included in the definition of "salary" for those schemes. For this reason, member contributions required under those schemes cannot be satisfied by salary sacrificed superannuation contributions.

2. ELIGIBILITY

Following consultation with the PSA it has been agreed that salary sacrifice will be available to the following classifications of employees:

- permanent full-time;
- part-time ie those employees who will be employed on an ongoing basis; and
- temporary or casual employees employed for periods in excess of 6 months.

Salary sacrifice **is not available** to casual employees or temporary employees employed for periods of 6 months or less.

3. QUANTUM OF SACRIFICE/CONTRIBUTION

3.1 Maximum Salary Sacrifice

It has been determined that the level of non-SES staff salary sacrifice for superannuation should be limited to 30% of award salary or "superannuable salary", whichever is the lesser. For example, a part time employee working 50% of standard award hours can sacrifice up to 30% of the salary actually paid. "Superannuable" salary is the salary as last notified to State Super. Because salary sacrifice for superannuation is classified as an "approved employment benefit" it will not reduce the superannuable salary.

Any change in an employee's salary would not result in a change to superannuable salary until that change is notified to State Super and has taken effect. Thus, even though an increase in salary may make it financially more feasible for an employee to sacrifice a greater amount of salary, the amount of the sacrifice will continue to be limited to 30% of the superannuable salary that applied before the increase in salary. If the salary becomes less than the superannuable salary, the award variation provides that the employee will only be able to sacrifice 30% of that lesser salary.

In the case of officers employed under the Crown Employees (Senior Officers) Award, the 30% limit includes any existing salary packaging arrangements.

Although salary sacrifice for superannuation reduces the base salary received by the employee, it has no effect on allowances, penalty rates, overtime, leave loading, etc. All calculations are based on the salary that would apply in the absence of salary sacrifice arrangements.

3.2 Determining the Amount of Employer Contributions Relative to Salary Sacrificed

As a general proposition, the contributions made by the Service should equal the amount of salary elected to be sacrificed by the employee. Thus, if an employee were to elect to sacrifice $1,000 per annum of salary to superannuation, contributions of $1,000 per annum would be made by the Service on behalf of that employee. These contributions would be additional to the contributions normally made by the Service before the salary sacrifice occurred.

As the majority of public sector employers, including NSW Health, making superannuation contributions pursuant to the salary sacrifice arrangements are exempt from Federal income tax, they are not effected by the Commonwealth's age-based limits on the amount of tax deductible superannuation contributions.

4. FUNDS TO WHICH CONTRIBUTIONS MAY BE MADE

Employees who wish to make contributions to a fund other than FSSS, HESTA or PHESF may do so. However, evidence must be provided that the fund is a complying fund in terms of the superannuation legislation.

Employees who are eligible for full membership of FSSS (ie. for whom their Service would have to make compulsory contributions pursuant to the superannuation guarantee provisions) are currently able to direct their Service to make superannuation guarantee contributions referable to them to any complying superannuation scheme other than FSSS. Employees who have elected to have their superannuation guarantee contributions paid to a non-FSSS fund **will be obliged** to have any salary sacrifice contributions paid into the same fund. If full members have not directed their Service to make compulsory superannuation contributions to another complying superannuation fund, then they would be bound by this policy regarding available funds for salary sacrifice contributions.

Contributions to multiple funds are not permitted pursuant to the salary sacrifice for superannuation arrangements. Therefore, an employee may only direct salary sacrifice superannuation contributions to one fund.

It has been agreed that an "A" and "B" list of funds would be developed. The "A" list comprises of those funds agreed between the HAC and the relevant unions. Whilst the list currently includes FSS, HESTA and PHESF it may be varied in future but it is agreed that it will be limited to no more than 5-6 funds.

An employee who elects to salary sacrifice for superannuation has the option, subject to the following, of contributing to one of the following funds;

"A" list funds

- First State Superannuation Scheme (FSSS) (HAC nominated fund); and
- Health Employees Superannuation Trustee Australia (HESTA) union nominated fund
- Private Health Care Employees Superannuation Trustee (PHESF) union nominated fund or

"B" list funds

- Any other private sector complying superannuation fund.

5. ADMINISTRATIVE ARRANGEMENTS

It is the primary responsibility of the employee, in determining whether to salary sacrifice for superannuation, to assess the implications of such a decision on his or her financial circumstances. Therefore, **employees** should seek independent financial advice.

Employers should ensure that employees wishing to salary sacrifice for superannuation or wishing to vary their existing arrangements complete the employee declaration (Appendix B) which also incorporates the payroll deduction form authorising the service to deduct any administrative charge due where necessary.

For a valid salary sacrifice for superannuation to exist, the salary sacrifice agreement between the Service and the employee must be made before the services to which the income relates are performed. **Therefore, an election made by an employee will only have effect in relation to income derived by the employee *after the election has been made.***

Accordingly, a salary sacrifice election should only be implemented from the period of service commencing after the election has been received in the human resources/payroll section. For example, if an employee is paid fortnightly in arrears (eg on each alternate Wednesday), an election received by a Service on the Tuesday of the first week of that cycle should not be given effect to in relation to salary payments for that fortnight, but rather should only be given effect for salary payments made in respect of the next commencing fortnightly cycle.

Any election made by an employee is valid only in relation to the current employer (ie Service). Within the NSW Health System employees may transfer their salary sacrifice for superannuation arrangements in accordance with normal mobility arrangements to another health service or to the Department of Health.

Employees transferring to other State Government Departments may not necessarily be allowed to transfer their salary sacrifice for superannuation arrangements. The decision as to whether such transfer arrangements will be accepted rests with each employing Department.

Employees are responsible:

- for completing the variation/election form and certifying that they have obtained independent financial advice or opted **not to** obtain such advice (refer Appendix C). The variation/election to sacrifice salary for superannuation must not exceed thirty (30) percent of the salary paid under the salaries/wages clause in the relevant award or thirty (30) percent of the currently applicable "superannuable salary" whichever is the lesser. "Superannuable salary" means the employee's salary as notified from time to time to the New South Wales public sector superannuation trustee corporations.

- for forwarding that form and where necessary providing evidence that the fund (if other than an "A" list fund) is a complying fund in terms of the superannuation legislation to the Human Resources or Payroll section of their organisation.

- for forwarding any cancellation advice to the Human Resources or Payroll section of their organisation (refer Appendix D).

- for ensuring that if they are below the ***superannuation contribution*** surcharge (currently a maximum of $92,111) threshold that they have notified the scheme trustees of their tax file number so as to avoid or reduce their surcharge liability.

Employers are responsible:

- for ensuring that the quantum of salary elected to be sacrificed as superannuation contributions is not more than 30% of the employee's "superannuable salary" or award salary, whichever is the lesser. For example, if the employee's "superannuable salary" is $40,000, and this is less than the employee's award salary, the Service should ensure that the amount elected to be sacrificed does not exceed $12,000 (ie. 30% of $40,000). However, if the employee's award salary in this instance was $35,000, the Service should ensure that the sacrifice amount does not exceed $10,500 (i.e. 30% of $35,000), being the lesser of superannuable salary and award salary.

- for ensuring that, if the employee has stipulated a fund other than FSSS/HESTA/PHESF for his or her salary sacrifice contributions, evidence is provided stating that the fund is a complying fund in accordance with the superannuation legislation.

- for making salary payments and superannuation contributions in a timely manner in accordance with the election received. The Department has determined that deductions for salary sacrifice for superannuation must commence within one month from the date the employee submits the completed application form and any other required documentation.

- for ensuring superannuation contributions pursuant to salary sacrifice arrangements are forwarded at the same time that routine superannuation deductions are forwarded.

- for ensuring the election notice is based upon yearly salary or wages and the amount elected to be sacrificed as superannuation by the employee represents a yearly sum ie in dollars ($). In determining the employee's cash salary after the election, the Service should simply deduct the yearly salary sacrifice amount from the employee's yearly base salary or wage. The amount remaining after this deduction will be the yearly base salary reported on the employee's pay slip. To determine the employee's cash salary per pay period, the Service should simply apply the formula below to the yearly base salary or wages.

  For example, an employee with a base salary of $40,000 per annum elects to sacrifice a yearly sum of $4,000 to superannuation. The employee's annual cash salary after election will be $36,000, and would be paid as follows:

  1. For an employee paid fortnightly – fortnightly salary and superannuation contributions would be calculated as follows:

     Gross Cash Salary $= \frac{\$36,000}{52.17857 \times 2}$

     $= \$1,379.88$ per fortnight

     Superannuation Contribution $= \frac{\$4,000}{52.17857 \times 2}$

     $= \$153.32$ per fortnight

     $= \$153.32$ per fortnight

- for ensuring that the reduction in fortnightly salary does not affect the calculation of penalty rates, overtime, leave loading, unused leave entitlements and other awards entitlements.

- for ensuring that any salary sacrifice contributions which are forwarded to a superannuation fund are correctly identified. For example, salary sacrifice contributions forwarded to FSSS should be identified as “optional employer” or “pre-tax” contributions. If contributions are forwarded to a private sector complying superannuation fund, they should simply be identified as “employer” contributions.

- for ensuring that employees are informed of their superannuation contributions made pursuant to salary sacrifice arrangements. Accordingly, the employee’s payslip must include notification of the employer’s (ie Employer) superannuation contribution pursuant to salary sacrifice arrangements under the heading “additional employer superannuation contributions”. As such, the employee’s payslip would include the employee’s gross cash salary (after sacrifice), tax deducted and remitted in relation to that gross cash salary, and net cash salary, and would also include the additional employer superannuation contributions as a separate component which is “non-taxable” to the employee. Both Workforce and Micropay have the capacity for fortnightly reporting of the employee’s contributions. It should be noted that such reporting is unrelated to the Employer group certificate obligations.

- for ensuring that employees are aware that any taxation benefits in relation to salary sacrifice for superannuation are based upon existing taxation legislation, continuation of such taxation benefits may be impacted by any future legislative changes.

- for ensuring that employees are aware that whilst the salary sacrifice for superannuation contribution arrangements may result in certain taxation benefits for employees, such taxation benefits are obtained at the expense of immediate access to the benefit accumulating as a result of those contributions ie ***the preservation implications of any salary sacrifice decision they may make.***

6. ADMINISTRATIVE CHARGES

No administrative charge is to be levied on employees who commence salary sacrifice to an "A" list fund or on an employee who, after the date of varying the award, cancels his or her "B" list post tax contributions and elects to salary sacrifice to an "A" list fund.

No administrative charge is to be levied on employees who, as at the date of varying the award, pay post-tax dollars to a "B" list fund and wish to transfer to pre tax contributions to the same "B" list fund. An administrative charge of $50.00 is to be levied on employees who after the date of varying the award, elect to salary sacrifice to a "B" list funds.

Employees will be permitted to vary an existing salary sacrifice for superannuation election once per year (the 12 month period being the anniversary of the payday the deductions commenced) without incurring an administrative charge. Requests to further vary the election during the 12 month period will incur an administrative charge of $50.00 per variation.

No administrative charge will be levied where an employee transfers from full-time to part-time or vice versa and elects to vary his/her election.

Cancellation of salary sacrifice contributions may be made at any time, provided one month’s notice is given, without an administrative charge being applied. In cases of pressing personal circumstances and where practicable, the notice period may be waived. Whilst the first commencement/cancellation of a salary sacrifice arrangement will be free of the administrative charge, if the salary sacrifice arrangement is resumed and again cancelled in the same year, an administrative charge of $50.00 will apply for each variation.

Employers should ensure that requests for elections to be cancelled are processed within one month from the date the cessation notice (Appendix C) is received by the pay office.

When an employee tenders his/her resignation **they may** request the salary sacrifice contribution not be deducted from their final salary and/or termination payment. No administrative charge will be levied in this circumstance.

7. TAXATION AND REGULATORY ISSUES

7.1 Taxation Benefits of Salary Sacrifice for Superannuation

Salary sacrifice for superannuation may result in certain taxation benefits to an employee arising as a result of the current concessional taxation treatment afforded to superannuation. Specifically, remuneration taken in the form of salary is fully taxable to the employee, the quantum of tax being dependent on the employee's marginal rate of tax. Salary sacrificing will reduce the employee's taxable income, and accordingly will reduce the employee's liability to income tax. Any amount of salary sacrificed to superannuation is subject to tax as follows:

a) Taxation upon entry to the superannuation fund - a superannuation contribution resulting from a salary sacrifice arrangement is treated for taxation purposes as an "employer contribution". Accordingly, the contribution will be subject to tax in the hands of the superannuation fund at the rate of 15%. The contribution tax paid by the superannuation fund would, as a matter of course, be charged to the relevant member's accumulation account within the superannuation fund. In other words, ignoring administration charges, which would be charged to the account, the superannuation contribution resulting from salary sacrifice will, after deduction of tax, be 85% of the amount contributed. This amount will then earn interest in the fund, with the interest also being taxed at 15%, rather that at the employee's marginal rate of tax, as would happen if the employee invested the money after it had been paid as salary.

   It is important to recognise that superannuation benefits may also be subject to tax when they are paid out from the superannuation fund. This tax upon exit from the fund could reduce (and in some cases eliminate) the ultimate tax advantage of salary sacrifice. ***In some cases where the total benefits are in excess of the members Reasonable Benefit Limit (RBL), penalty tax rates can apply.*** For this reason, **employees should be strongly encouraged to seek financial planning advice prior to entering into the salary sacrifice arrangements.**

   As the taxation benefits noted above in relation to salary sacrifice for superannuation are based upon existing taxation legislation, continuation of such taxation benefits may be impacted by any future legislative changes. *Employers should clearly indicate this fact to employees.*

b) Superannuation contributions surcharge – certain superannuation contributions, including contributions made pursuant to salary sacrifice arrangements, will be subject to an extra tax in addition to the 15% tax noted in (a) above. The imposition of this additional tax, known as the “superannuation contribution surcharge”, is dependent upon the salary of the individual in respect of whom the contributions are made.

   The surcharge is payable if the individual’s “adjusted taxable income” for the financial year is greater than the “surcharge threshold” for that year. An individual’s “adjusted taxable income” is the sum of that individual’s taxable income for the financial year plus the individual’s employer superannuation contributions for the year, including any salary sacrifice contributions. Certain eligible termination payments and lump sum leave payments on termination of employment are not included in the “adjusted taxable income”.

   Liability to the surcharge will not arise if the individual’s adjusted taxable income is less than the threshold amount (being $75,856 for the 1998/99 financial year, indexed annually in accordance with movements in Average Weekly Ordinary Time Earnings). The rate of surcharge is 15% if the individual’’ adjusted taxable income exceeds an upper threshold amount (being $92,111 for the 1998/99 financial year, indexed annually as above). The rate of surcharge will be between 0% and 15% if the individual’s adjusted taxable income is between the threshold amount and the upper threshold amount.

   Note: To avoid the surcharge, individuals below the surcharge threshold must also have notified the scheme trustees of their tax file number.

7.2 Preservation of Salary Sacrifice Contributions

Superannuation benefits arising from contributions made pursuant to the salary sacrifice arrangements will be “preserved” benefits. Preserved benefits can generally only be accessed by an individual upon attaining 55 years of age and retiring from gainful employment. Other circumstances under which preserved benefits may be accessed include death, permanent incapacity, financial hardship, and permanent departure from Australia. Whilst preserved benefits generally cannot be accessed by the individual, they can be transferred to another complying superannuation fund or a roll over institution such as an approved deposit fund, if the employee resigns.

Whilst preserved benefits can currently be accessed upon retirement having attained the age of 55 years, that position is to change from 1 July 1999. From that date, the age at which an individual can access preserved benefits upon retirement is to be increased for people born after 1 July 1960. For persons born between 1 July 1960 and 30 June1964, the relevant age will be between 55 and 60 depending on the individual’s birthdate. For persons born after 1 July 1964, the relevant age at which preserved benefits can be accessed will be 60.

Accordingly, whilst the salary sacrifice for superannuation contribution arrangements may result in certain taxation benefits for employees, as mentioned above, such taxation benefits are obtained at the expense of immediate access to the benefit accumulating as a result of those contributions. ***Employers should take steps to ensure that employees are aware of the preservation implications of any salary sacrifice decision they may make.***

7.3 Tax Collection Responsibilities/Other Taxes and Imposts

The following matters should be noted in relation to Employers’ tax collection responsibilities and in relation to other taxes and imposts applicable to Employers due to their status as employers:

a) *Pay as You Earn (PAYE) deduction and remittance* – following an election by an employee to sacrifice salary for superannuation contributions, the PAYE amount deducted from an employee’s salary and remitted to the ATO **should be based upon the employee’s post-sacrifice salary**. As mentioned above, the employee’s elected salary is recalculated having regard to that employee’s elected salary sacrifice. The employee’s annual salary per pay period is determined by reference to that recalculated annual salary. It is that recalculated annual salary per pay period upon which PAYE deductions and remittances should thereafter be based. There should be no taxation deductions or remittances from superannuation contributions pursuant to the salary sacrifice arrangements.

b) *Payroll Tax* – employer contributions to a superannuation fund have been subject to payroll tax in NSW from 1 July 1996. As contributions made to superannuation funds pursuant to the salary sacrifice arrangements will constitute employer contributions, those contributions will be subject to NSW payroll tax.

c) *Workers Compensation premiums* – workers compensation entitlements of non-SES staff should not be reduced by any salary sacrifice to superannuation that they may make. Accordingly, workers compensation premiums payable by Employers should be based upon the employees’ pre-sacrifice remuneration.

7.4 Other Superannuation Entitlements of Employees - Entitlements Under the Superannuation Guarantee Provisions

Employer contributions to satisfy superannuation guarantee requirements are, in general terms, a function of the cash salary of relevant employees. Prima facie, then, a reduction in cash salary resulting from an employee’s salary sacrifice election will reduce the employer contributions required to be made to satisfy the superannuation guarantee provisions.

Further, salary sacrifice contributions constitute “employer contributions”. In assessing an employer’s satisfaction of its superannuation guarantee requirements, regard is only had to the amount of employer contributions made by the relevant employer. In other words, no distinction is drawn between contributions made pursuant to salary sacrifice arrangements and contributions made otherwise. Prima facie then, contributions made pursuant to salary sacrifice arrangements may reduce or eliminate the requirements for other employer contributions to be made to satisfy superannuation guarantee requirements.

In order to ensure that non-SES staff are not disadvantaged by any salary sacrifice election through a reduction in employer contributions which would otherwise have been required to satisfy superannuation guarantee requirements, awards have been varied specifically to ensure that there is no impact on an employer's compulsory contributions in respect of an employee, notwithstanding the fact that the employee may salary sacrifice for superannuation. This means that where salary sacrifice reduces an employers superannuation guarantee requirements in respect of a particular employee, the employer will make additional employer contributions over and above superannuation guarantee requirements, quite apart from the contributions which the employer would make as a result of the salary sacrifice agreement. However, if an employer were obliged to calculate and pay a superannuation guarantee shortfall, that calculation and payment should be based upon the post-sacrifice salary.

7.5 Other Superannuation Entitlements of Employees – Entitlements Under Defined Benefit Schemes

The defined benefits of members of the State Superannuation Scheme (SSS), State Authorities Superannuation Scheme (SASS) and State Authorities Non-Contributory Superannuation Scheme (SANCS) are based upon the "salary" of those members. "Salary" for this purpose is defined in the relevant Acts of Parliament which govern the defined benefit schemes to include "approved employment benefits". Salary sacrifice for superannuation of up to 30% of superannuable salary or 30% of award salary whichever is the lesser has been designated by the Premier and the Treasurer as an "approved employment benefit" and will therefore continue to be included in the employee's superannuable salary. Accordingly, the defined benefits of members of these schemes will not be affected by any decision of the member to sacrifice salary for superannuation contributions.

The following additional matters in relation to members in the defined benefits schemes should also be noted:

a) required member contributions to the defined benefits schemes are calculated by reference to "salary" as defined in the relevant Act, which is inclusive of "approved employment benefits". By virtue of the designation of salary sacrifice for superannuation as an "approved employment benefit", required member contributions to the defined benefits schemes should be calculated on the pre-sacrifice remuneration of the member.

   In addition, salary sacrifice arrangements cannot be applied in satisfaction of the required member contributions for members of the defined benefits schemes. Contributions pursuant to salary sacrifice arrangements constitute "employer contributions" and as such will not satisfy the requirements under the relevant Acts for member contributions to be made to the relevant defined benefits schemes. Such member contributions must continue to be made from post tax salary of the member.

b) In providing salary information to State Super in relation to employees who are members of the defined benefit schemes, Employers should ensure that salary sacrifice contributions are included in "salary". It is therefore important for Employers to have regard to the limitations that apply to salary sacrifice for superannuation so that they do not inadvertently increase the superannuable salary above what it would have been without salary sacrifice, as such an increase would result in increased costs for them.

c) Employees who receive compulsory contributions in FSSS will continue to receive the same amount of employer contributions after salary sacrifice as before. The definition of "salary or wages" in the FSSS legislation is considered broad enough to allow salary sacrifice contributions to superannuation to be included in that definition.

APPENDIX C

SALARY SACRIFICE FOR SUPERANNUATION ELECTION AND VARIATION FORM

Employee Name:_________________________________ Payroll Number:_______

Current Super Scheme:____________________________ Super No:____________

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1. Base (Annual) Salary $
2. Superannuable Salary $
3. Salary Sacrifice for Superannuation $
(The amount sacrificed for superannuation contributions must not exceed 30% of “superannuable salary” or award salary whichever is the lesser.)
4. Adjusted Base (Annual) Salary (1 - 3) $
5. Superannuation fund to which contributions are to be made:

____

PART A - DECLARATION BY EMPLOYEE:

I, ………………………………………….., hereby certify that I have obtained independent financial advice in relation to this salary sacrifice election or I have not obtained financial advice but I fully understand the implications of my election.

I understand that superannuation benefits derived from salary sacrifice contributions will constitute “preserved” benefits. As such, the benefits generally will not be able to be accessed by me until retirement from the workforce after having attained the requisite age (currently 55).

Further, I understand that any benefit that may be generated in the nominated superannuation fund by my salary sacrifice contributions is dependent on factors (eg. Fund earnings rates, changes to taxation legislation and charges) beyond the control of my employer and my employer can in no way guarantee the benefit to be derived from my salary sacrifice superannuation contributions.

I also understand that this election will remain in force until I cancel it or make a new election. It will not automatically be amended for changes to my salary, nor will it be amended automatically should there be any changes to the tax regime as it applies to superannuation or salary sacrifice arrangements generally.

Signed (signature of employee)………………………………

Witness………………………………. Date…………………..

Part B – AUTHORITY TO DEDUCT ADMINISTRATIVE CHARGE (WHERE APPLICABLE)

In addition, I hereby authorise the Payroll Officer to deduct the $50.00 Administrative Charge from my salary from the next available payday.

Signed (signature of employee)………………………………

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<td>

Employer Use Only

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Witness……………………………… Date…………………..	

APPENDIX D

CANCELLATION OF ELECTION FOR SALARY SACRIFICE FOR SUPERANNUATION

PART A – REQUEST FOR CANCELLATION

To the Payroll Manager:

I request you to cancel my election for salary sacrifice for superannuation from the next available payday (or within one month from the date of this authority being received).

In addition (and where applicable), I hereby authorise the Payroll Officer to deduct the $50.00 Administrative Charge from my salary from the next available payday.

Signed (signature of employer)…………………………..…………………………………….

Witnessed…………………………………………………………Date:…………………….…..

PART B – AUTHORITY TO DEDUCT ADMINISTRATIVE CHARGE (where applicable)

Signed (signature of employer)…………………………..…………………………………….

Witnessed…………………………………………………………Date:…………………….…..

Received by Pay Office…………………………………………………………………………

Pay Office Action Completed……………………………………………………………………